IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 20971 of 2003(V)

PETITIONER:

THE CHAIRMAN,
SREE NARAYANA MEDICAL TRUST SANKAR SHASHTYABDA
POORTHY MEMORIAL HOSPITAL, KOLLAM.

BY ADV. SRI.A.N.RAJAN BABU

RESPONDENTS:

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1. APPELLATE AUTHORITY UNDER THE PAYMENT OF
GRATUITY ACT 1972 (REGIONAL LABOUR COMMISSIONER),
KOLLAM.

2. CONTROLLING AUTHORITY UNDER THE PAYMENT
OF GRATUITY ACT 1972 (DISTRICT LABOUR OFFICER),
KOLLAM.

3. DR.JOSEY NEROTH,
NEROTH HOUSE, KADAPPAKADA, KOLLAM.

4. STATE,
REP. BY CHIEF SECRETARY, TRIVANDRUM.

BY ADV. SRI.P.B.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.7771 OF 2003 IN W.P.(C)NO.20971/03
DISMISSED

20.03.2007. SD/-S. SIRI JAGAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF APPLICATION DT,.30.06.97.

EXT.P2: TRUE COPY OF WRITTEN OBJECTION SUBMITTED BY PETITIONER.

EXT.P3: TRUE COPY OF ORDER NO. G.O.(RT)NO.2906/93/LBR DT. 18.11.93.

EXT.P4: TRUE COPY OF ORDER OF STAY IN C.M.P.NO.38182 OF 98 IN O.P.21684/98 DT. 6.11.98.

EXT.P5: TRUE COPY OF KERALA SHOPS & ESTABLISHMENT ACT 1960 G.O.MS.NO.50/94 LBR DT. 13.9.94.

EXT.P6: TRUE COPY OF GRATUITY ACT BY ORDER DATED 28TH JUNE 2000 IN G.C. NO.1-1-97.

EXT.P7: TRUE COPY OF APPEAL MEMORANDUM.

EXT.P8: TRUE COPY OF ORDER DATED 31.10.2001 G.A. NO.5/01 DISMISSED THE APPEAL.

EXT.P9; TRUE COPY OF SHOW CAUSE NOTICE NO. GC 114/1997 DT. 31.12.2002.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 20971 OF 2003

DATED THIS THE 20th DAY OF MARCH, 2007

JUDGMENT

The petitioner is a Hospital. The 3rd respondent was a Doctor, who worked in the petitioner- Hospital for about 11 years. After resignation from the petitioner – Hospital, the 3rd respondent filed an application before the Controlling Authority under the payment of Gratuity Act seeking direction to the petitioner to pay the gratuity payable to the 3rd respondent under the payment of Gratuity Act. The same was allowed by Ext.P6 and the petitioner was directed to pay an amount of Rs.44,423/- with 10% interest as gratuity due to the third respondent. The petitioner challenged the same before the Appellate Authority under the Payment of Gratuity Act who dismissed the same by Ext.P8 order.

2. The petitioner is challenging Exts.P6 and P8 orders. The challenge is mainly on the ground that there is no employer - employee relationship between the petitioner and the 3rd respondent so as to entitle the 3rd respondent to claim gratuity from the petitioner. The argument appears to be that the 3rd respondent, who is a Doctor,

who has been allowed private practice, cannot be termed as an employee as defined under the Payment of Gratuity Act.

3. I have considered the rival contentions in detail. There is no dispute by the petitioner that during the working hours allotted to the 3rd respondent, he was working in the hospital. Admittedly the Doctor working in the Hospital would certainly be an employee under the Payment of Gratuity Act. But the distinction tried to be drawn by the learned counsel for the petitioner in this case is that since unlike the Government Doctors, the Doctors of the petitioner-Hospital are permitted to have private practice, the 3rd respondent cannot be termed as an employee as defined under the Act. I do not find any merit in the contention. In so far as the 3rd respondent is working in the Hospital as an employee during the working hours allotted to him and, the fact that outside his working hours he is doing some private practice which he is allowed to do by the petitioner itself, that would not take him out of the definition of an employee under the Payment of Gratuity Act.

3. The learned counsel for the petitioner would also contend that the petitioner-Hospital is not a Shop or a Commercial establishment so as to be covered under the Payment of Gratuity Act. Recently, this Court has already held that private Hospital comes within the definition of Shop or Commercial establishment as defined under the Kerala Shops and Commercial Establishment Act.

That being so, I do not find any merit in the contention of the petitioner in respect of that issue also.

In the above circumstances, there is no merit in the original petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

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